

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
) 2:04-cr-441-GEB
Plaintiff,)
)
v.) TENTATIVE RULINGS ON MOTIONS
) IN LIMINE^{*}
WILLIAM ALLEN BLOOMFIELD,)
)
Defendant.)
_____)

In a filing on August 15, 2005, the government gave notice of its intent "to offer evidence [at trial] of Defendant William Bloomfield's prior crimes, wrongs, and acts." (Notice at 1.) The government argues the proffered evidence is admissible since it is "inextricably intertwined with the charged offense." (Id.) Further, the government contends the proffered evidence is admissible since it is "evidence of intent, preparation, plan, knowledge, and absence of mistake pursuant to Federal Rule of Evidence 404(b) [and] demonstrate[s] that the defendant knowingly possessed, received, and distributed material involving the sexual exploitation of minors, to

* These tentative rulings are provided to help the parties focus their oral argument at the hearing scheduled to commence at 10:30 a.m. on September 2, 2005.

wit several images and videos identified as child pornography"
(Id.)

The government states it intends to offer the following
evidence:

During the evening of January 17, 2004, the defendant, his then-wife Kim, his 13 year old stepdaughter "DOE," and his 18 year old son "K.B.," were visiting with relatives. After dinner the conversation turned to a discussion of pedophiles and their treatment. DOE became noticeably upset and left the room. DOE then confided in K.B. that the defendant had been sexually molesting her for three years. K.B. insisted that DOE tell her mother, saying that if she did not, he would.

The next evening, January 18, DOE told her mother that the defendant had been sexually molesting her since October, 2000. Kim immediately took DOE to the police station to report the molestation. She and DOE also collected the computers used by the defendant believing that they might contain evidence because, on two occasions, she had seen child pornography being downloaded by the defendant (October or November, 2000,^[2] and November, 2003).

^[2] During the initial incidents, Kim confronted the defendant. He told her that he was downloading and collecting the pornography so that he could alert the download service provider to take the files off. She demanded that he delete the images and he told her that he had.

DOE was interviewed twice by law enforcement personnel. She explained that the defendant had been molesting her since she was ten.^[1] DOE related that the defendant initiated the molestation in October 2000, telling her that he would teach her about sex. Between October 2000 and approximately December 2003, when she was 13 years old, the defendant had sexual intercourse with DOE numerous times. He also instructed DOE in how to orally copulate him, advising her that it would make her husband happy. He also requested that she perform oral sex on him on numerous occasions. The defendant instructed DOE to keep the molestations a secret because no one would believe her. He also said that she would

1 never see her grandfather again if she disclosed
2 the molestation.

3 On one occasion the defendant showed DOE a
4 pornographic movie on the computer. On another
5 occasion DOE discovered the defendant looking at
6 child pornography on the computer. DOE told the
7 defendant that it was illegal, and called him a
8 "sicko," but the defendant explained that he was
9 collecting it for the FBI and sending it to
10 them.^[4]

11 ^[4] DOE described the picture she saw the
12 defendant viewing as a "young girl, 10
13 years old" without clothes, performing a
14 graphic sexual act.

15 The government also intends to introduce
16 evidence from DOE's mother [Kim] that on two
17 occasions (October or November, 2000, and
18 November, 2003) she discovered child pornography
19 on the defendant's computer. During the first
20 incident, the defendant insisted that he was
21 gathering evidence to turn it over to the FBI.

22 (Notice at 2-4.)

23 The pornography that DOE states Defendant showed her on two
24 separate occasions on a computer and the child pornography that Kim
25 observed him looking at on a computer, and the communications
26 Defendant had with each of these individuals on those occasions, is
27 admissible since it either concerns the indicted crimes or is
28 inextricably intertwined with the indicted offenses.¹

1 The government argues that the other proffered evidence in
the government's case-in-chief, which for the sake of brevity is
characterized as molestation evidence, is inextricably intertwined

¹ Although it is unclear whether one of the occasions
described by DOE concerned child or adult pornography, that
incident is considered inextricably intertwined with the indicted
offenses since she described what she saw in pertinent part as
follows: "it was a girl with little bows in her hair and an old
guy and they started having sex." (Police Report attached to
Notice as 000037.)

1 with the indicted offenses, indicating that it explains Kim's
2 motivation in taking the computer and DOE to the Sheriff's Department.
3 However, the molestation evidence is not inextricably intertwined with
4 the indicted offenses since Kim's motivation in taking the computers
5 and DOE to the Sheriff's Department "has nothing whatsoever to do with
6 the factual setting of the [crimes] charged in this case." United
7 States v. Heidebur, 122 F.3d 577, 580 (8th Cir. 1997).

8 Since the molestation evidence is not inextricably
9 intertwined with the indicted offenses, its admissibility is analyzed
10 under Federal Rules of Evidence 404(b) and 403.² To be admissible
11 under Rule 404(b), the molestation evidence must be "(1) sufficient
12 . . . for the jury to find that the defendant committed the
13 [molestations]; (2) . . . introduced to prove a material issue in the
14 case; (3) . . . not too remote in time; and (4) if admitted to prove
15 intent, [it must be] similar to the offense charged." United States
16 v. Murillo, 255 F.3d 1169, 1175 (9th Cir. 2001) (citation omitted).
17 "Once relevance is established, the district court should admit the
18 evidence unless its prejudicial impact substantially outweighs its
19 probative value." United States v. Johnson, 132 F.3d 1279, 1282 (9th
20 Cir. 1997).

21 The government argues that the molestation evidence
22 established through DOE's testimony regarding the
23 molestations, will be offered to prove
24 [Defendant's] knowing and intentional possession
25 and receipt of child pornography. Based upon the
26 nature of the anticipated defenses at trial, the
introduction of prior act evidence is critical to
establish the defendant's intent to possess images
depicting minors in sexually explicit conduct.
The evidence also rebuts any claim that the

27 ² Unless otherwise indicated, all references to Rules are
28 to the Federal Rules of Evidence.

1 defendant was merely conducting research for law
2 enforcement. The evidence counters any other
3 general claim that the defendant lacked intent or
4 that an outsider impermissibly used his wireless
5 network to place the images on his computer.

6 (Notice at 5-6.)

7 The essence of the government's position is that the
8 molestation evidence concerning Defendant's sexual exploits of DOE, a
9 child victim, demonstrates his sexual interest in children and has
10 probative value on the material issue that he knowingly possessed and
11 that he knowingly received and/or distributed child pornography. The
12 government also argues that admission of the evidence and Kim's
13 response to it - when she turned the computers over to the Sheriff's
14 Department - is "the only way for the jury to assess the defendant's
15 anticipated defenses" because otherwise "the jury will be left to
16 speculate why Kim turned the computers over to the Sheriff's
17 Department." (*Id.* at 5.) Defendant opposes the government's Rule
18 404(b) motion, construing the government's argument to state "that
19 such molestations are motive for the possession of the child
20 pornography."³ (Def.'s Opp'n filed 8/30/05 at 2.)

21 Even though the molestation evidence has some probative
22 value, it still "may be excluded if its probative value is outweighed
23 by the danger of unfair prejudice. . . ." United States v. Merino-
24 Balderrama, 146 F.3d 758, 761 (9th Cir. 1998) (quoting Rule 403).

25 The Supreme Court has stated that the district
26 courts should balance the probative value of a
27 given evidentiary item against its prejudicial
28 potential in the following way: "On objection, the
court would decide whether a particular item of
evidence raised a danger of unfair prejudice. If

³ The government mentioned "motive" when discussing the
propositions on which 404(b) evidence is admissible. (Notice at
5.)

1 it did, the judge would go on to evaluate the
2 degrees of probative value and unfair prejudice
3 not only for the item in question but for any
4 actually available substitutes as well. If an
5 alternative were found to have substantially the
6 same or greater probative value but a lower danger
of unfair prejudice, sound judicial discretion
would discount the value of the item first offered
and exclude it if its discounted probative value
were substantially outweighed by unfairly
prejudicial risk."

7 Id. at 761-62 (citing Old Chief v. United States, 519 U.S. 172, 182
8 (1997)).

9 It is recognized that:

10 Parties always introduce evidence that will do
11 damage to the other side's case; that's the very
12 point of a trial. That evidence may decimate an
13 opponent's case is no ground for its exclusion
under 403. The rule excludes only evidence where
the prejudice is "unfair"-that is, based on
something other than its persuasive weight.

14 United States v. Cruz-Garcia, 344 F.3d 951, 956 (9th Cir. 2003). "As
15 the Advisory Committee Notes to [Rule] 403 explain, unfair prejudice
16 means 'undue tendency to suggest decision on an improper basis,
17 commonly, though not necessarily, an emotional one.'" United States
18 v. Hankey, 203 F.3d 1160, 1172 (9th Cir. 2000).

19 The molestation evidence has the attendant risk of unfair
20 prejudice because it could invoke an adverse emotional response
21 against Defendant. "[O]nce the district court conclude[s] that the
22 [admission of evidence] raise[s] a danger of unfair prejudice, Rule
23 403 require[s] it critically to 'evaluate the degree of probative
24 value . . . not only for the [evidence] in question but for any
25 actually available substitutes as well.'" Merino-Balderrama, 146 F.3d
26 at 762 (quoting Old Chief, 519 U.S. at 173).

27 The government argues that the molestation evidence has
28 probative value since it shows Defendant's "knowing and intentional

1 possession and receipt of child pornography." (Notice at 6.)
2 However, the evidence that DOE states Defendant showed DOE child
3 pornography and the evidence that Kim observed Defendant looking at
4 child pornography on a computer, and the communications Defendant had
5 with each of these individuals on those occasions, is sufficient
6 substitute evidence on the proposition the government seeks to
7 establish on Defendant's knowledge.⁴

8 The government also argues that the evidence has significant
9 probative value on Kim's motive in taking the computers and DOE to the
10 Sheriff's Department immediately upon learning about the molestations.
11 But Defendant's opposition proposes an alternative way for the
12 government to explain why Kim gave the computers to the Sheriff's
13 Department; specifically, that "she believed that there might be
14 images of child pornography on the computers" because she previously
15 saw Defendant looking at child pornography on a computer. (Def.'s
16 Opp'n at 6.) Thus, the essence of Defendant's position is that
17 instead of the government offering the molestation evidence to explain
18 Kim's motive, the government could introduce, as substituted evidence,
19 that Kim took the computers and DOE to the Sheriff's Department as a
20 result of information that DOE told Kim and based upon Kim's previous
21 observation of Defendant's use of a computer. This substituted
22 evidentiary approach is sufficient on the proposition the government
23 seeks to establish on Kim's motive.

24 Furthermore, Defendant has construed the government's Rule
25

26 ⁴ The government also contends that the molestation
27 evidence establishes Defendant's intent. However, the indicted
28 offenses require the government to prove Defendant knowingly
possessed and/or received child pornography; therefore,
Defendant's intent is not a material issue in this case.

1 404(b) proffer as also arguing that the evidence is probative on
2 Defendant's motive to possess and receive child pornography. Although
3 a logical inference can be drawn from the molestation evidence that
4 Defendant has a sexual interest in children and therefore was
5 motivated to have knowingly possessed and received child pornography,
6 the probative value of this Rule 404(b) proposition is substantially
7 outweighed by the danger of unfair prejudice, in light of the indicted
8 offenses.⁵

9 For all the stated reasons, the molestation evidence is not
10 admissible in the government's case-in-chief on the proffered Rule
11 404(b) propositions. Therefore, the Notice is granted and denied in
12 part.

13 Lastly, the government moves in limine for a ruling that
14 precludes Defendant from making any reference to the District
15 Attorney's Office's decision not to file child molestation charges
16 against Defendant. However, it has not been shown that this issue is
17 ripe for review in light of the above ruling.

18 Dated: August 31, 2005
19

20 /s/ Garland E. Burrell, Jr.
21 GARLAND E. BURRELL, JR.
22 United States District Judge
23
24

25 ⁵ The probative value of this evidentiary proposition is
26 balanced against the risk that the jury could use this evidence
27 for "something other than its persuasive weight," Cruz-Garcia,
28 344 F.3d at 956, by using it as propensity evidence. See
Heidebur, 122 F.3d at 581 (stating that the court could not "see
any way in which the defendant's abuse of his stepdaughter [was]
probative of his knowing possession of [child pornography], other
than by establishing a propensity for these kinds of crimes.").